IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

FIRST APPEAL NO.484 OF 1989

The State of Maharashtra ... Appellant

V/s.

1. Kana Nago Gowari
2. Bama Dhaya Gowari
3. Pramod Dhaya Gowari
4. Smt.Poshibai Ragho Patil
all resident of Village Kamothe
Tal.:Panvel, Dist.:Raigad ... Respondents

Mrs.Mulekar, AGP, for Appellant
Mr.K.K. Malpathak for Respondent Nos.1 to 4

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **OCTOBER 15, 2004**

ORAL JUDGMENT:

. This First Appeal has been filed against the original decree passed by the trial Court in Land Acquisition Reference No.167 of 1986. The trial Court has granted the claimants, respondents herein, Rs.18,151.37 with interest @9% per annum on the amount of Rs.15,992.45 from the date of the order till realisation.

2. The suit lands are situate in village Kamothe. By notification dated 3.2.1970 issued under section 4 of the Land Acquisition Act, the land owned by the respondents in Village Kamothe, Taluka: Panvel,

District: Raigad was acquired for the New Bombay township project. On 5.8.1986, after the completion of other formalities, the Special Land Acquisition Officer awarded Rs.3/- per sq.mtr. in respect of the acquired land. On 15.8.1986, the notice under section 12(2) of the Land Acquisition Act was served on the respondents and possession of the lands was taken on 18.8.1986. The respondents preferred a Reference under section 28A of the Land Acquisition Act on 15.9.1986 for enhancement of the compensation. By judgment and award dated 30.1.1988, the Civil Judge, Senior Division, Raigad enhanced the compensation and awarded the sum @ 10/- per sq.mtr. in respect of the acquired land. Aggrieved thereby, the present appeal has been preferred against the said judgment of the Reference Court.

3. The respondents have also filed cross objection bearing Stamp No.21752 of 1989.

4. It appears from the record that the land is situated at about 1300 metres away from the national highway. The Reference Court while passing the judgment has considered the fact that in some other cases the compensation awarded was @ Rs.15/- per sq.mtr. for the land at Panvel and Rs.25/- per sq.mtr. for acquisition of land at Alibaug. Considering these land references, the award was passed for the land situated in Village

Kamothe, which was at a short distance from Panvel fixing the price of the land at Rs.10/- per sq.mtr. The Reference Court has also considered the fact that there was a cattle shed and trees and accordingly, has granted 30% as solatium and interest @ 12% per annum.

5. The claimants have sought enhancement of the compensation to Rs.20/- per sq.mtr. by filing the cross objection. Mr.Malpathak, appearing for the claimants, submits that the judgment of the Division Bench of this Court in the case of *Nama Padu Hudar v/s. The State of Maharashtra,* **1993(3) Bom.C.R. 54,** considered the acquisition of land under the same notification of 3.2.1970 whereby the Division Bench has granted compensation at the rates varying between Rs.20/- to Rs.25/- per sq.mtr., depending on the proximity of the land to the Bombay-Pune national highway. The lands at Kamothe Zilla Parishad within 1200 metres of the Bombay-Pune highway were covered by First Appeal Nos.753 of 1986, 751 of 1986 (part) and 752 of 1986. This Court has directed that an amount of Rs.22/- per sq.mtr. be paid to those lands which were at a distance of 1200 metres from the Bombay-Pune highway. Mr.Malpathak, therefore, submits that the respondents are entitled to the claim in the cross objection at Rs.20/- per sq.mtr.

6. On the other hand, it is submitted by

Mrs.Mulekar, learned Assistant Government Pleader, that by the judgment in the case of *State of Maharashtra v/s. Shri Dattu Maruti Mhatre* **(First Appeal No.1058 of 1989)**, another Division Bench of this Court considered the acquisition of lands under the same notification and has granted compensation @ Rs.15/- per sq.mtr. and, therefore, she submits that the claim made by the claimants of Rs.20/- per sq.mtr. ought not to be granted as it is exhorbitant.

7. The judgment in *Nama Padu Hudar & Ors*. (supra), which is a year prior in point of time, has obviously not been brought to the notice of the Division Bench deciding First Appeal No.1058 of 1989. The earlier Division Bench has considered the same notification and compensation in great detail and has awarded Rs.22/- per sq.mtr. to the claimants whose lands in Kamothe Village have been acquired. I do not see any reason as to why the claim made in the cross objection should be disallowed. There is ample evidence on record to indicate that the land in question was only around 1300 metres away from the national highway. The land which was considered by the Division Bench in First Appeal No.1058 of 1989 was about 3.5 kms. away from the national highway. Obviously, therefore, only Rs.15/- per sq.mtr. was granted as the compensation. Therefore, the claim made in the cross objection would

have to be allowed.

8. The learned Assistant Government Pleader then raised the issue regarding deduction to be made for development charges. She relies on the judgment in the case of *Kasturi & Ors. v/s. State of Haryana,* **(2003) 1 SCC 354** of the Supreme Court to submit that although the normal rule is to deduct 30% of the amount of compensation towards the development charges, she submits, in the present case at least 15% should be deducted towards the development charges. The judgment of the Supreme Court was in respect of the acquisition of huge tracts of land. The Supreme Court considered that such a deduction would have to be made for the entire area of 24 acres for being fully developed with facilities of drainage, electricity, roads, communication, etc. In the present case, the acquisition is of 700 sq.mtrs. of land and therefore, I do not think that permitting the deduction of development charges at the rate suggested by the learned Assistant Government Pleader would be appropriate. In First Appeal 1058 of 1989, this Court has permitted the deduction of Re.1/- per sq.mtr. towards development charges. This amount may be deducted in the present case also as in my opinion this would be a fair and reasonable amount.

9. In the circumstances, the rate of compensation payable for the land of the respondents is fixed at Rs.20/- per sq.mtr. subject to a deduction of Re.1/- per sq.mtr. towards the development charges. Accordingly, the First Appeal No.484 of 1989 is dismissed. The Cross Objection, which is not numbered, is allowed. No order as to costs.

10. Office is directed to number the Cross objection in this First Appeal.